

## REMARKS

1. In this response to the Office Action mailed June 27, 2008, Applicants respectfully request reconsideration. Claims 39-69 were last presented in the application. In the outstanding Office Action, all claims have been rejected. By the foregoing Amendments, claims 39 and 55-69 have been amended and claims 74-77 have been added. No claims have been canceled. Thus, upon entry of this paper, claims 39-69 and 74-77 will be pending in this application. Of these thirty-five claims, two (2) claims (claims 39 and 55) are independent.

2. Based on the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

### *Claim Rejections under 35 U.S.C. § 102*

3. The Examiner has rejected claims 39-41, 43-49, 55-57, 59-62 and 64 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,648,914 to Berrang *et al.*, (hereinafter, "Berrang").

4. Applicants submit that Berrang fails to disclose or render obvious all of the elements of each of the amended independent claims.

### *Claim 39*

5. Independent claim 39 recites, among other things, an implantable component of a cochlear implant system comprising housing and a first region configured such that following implantation of a second region into the cochlea, the housing is rotatable between a first implant orientation in which the housing is implanted in the recipient such that a first surface of the housing is positioned adjacent to the recipient's skull and a second implant orientation in which the housing is implanted in the recipient's skull such that a second surface of the housing is positioned adjacent the recipient's skull, the housing further rotatable such that the second region implanted in the cochlea remains substantially stationary during the rotation and the locations of receiver electronics relative to an ear of the recipient are different in the first and second implant orientations.

6. Berrang clearly fails to disclose or render obvious such an implantable component. In particular, Berrang is directed to a cochlear prosthesis having an implantable housing

which comprises two sections. (*See*, Berrang, Abstract; col. 3, lns. 33-44.) Each section has a thin, rounded shape, and the two sections “are joined by a pliable (or bendable) bridge to allow the surgeon to bend said bridge so as to better fit the two housing sections to the curve surface of the skull.” (*See*, Berrang, col. 3, lns. 33-44). The pliable bridge may adopt a bent shape during insertion of the housing into the recipient. (*See*, Berrang, col. 9, lns. 60-67).

7. In the outstanding Office Action, the Examiner asserts that the Berrang device anticipates claim 39, because “due to the flexible nature of the electrode array and the pliable bridge connecting the two portions of the housing together the housing is capable of rotating about an axis that is substantially aligned with a longitudinal axis of the electrode array when the patient’s head grows.” (*See* Office Action, pgs. 4-5). The Examiner states that because the previously pending claim does not mention how much the housing must be rotatable about the axis, “a small possible rotation “when the patient’s head grows fulfills the limitations of the claims.” (*See* Office Action, pgs. 4-5.)

8. Applicants disagree. However, as noted above, Applicants have amended independent claim 39 to recite, among other things, that the “housing is rotatable between first implant orientation in which the housing is implanted in the recipient such that the first surface is positioned adjacent the recipient’s skull and a second implant in which the housing is implanted in the recipient such that the second surface is positioned adjacent the recipient’s skull...” This amendment directly addresses the Examiner’s statement that claim 39 does not mention how much the housing must be rotatable about the axis. As clearly recited, the housing now rotates between a first surface and a second surface.

9. Applicants assert that Berrang does not disclose nor renders obvious such an implantable device. Rather, in Berrang, only small rotations resulting from the growth of the skull are permitted. (*See* Berrang, col. 9, lns. 56- col. 11, ln. 33.) At all times, the Berrang device remains positioned on the same surface. (*See* Berrang, col. 9, lns. 56- col. 11, ln. 33).

10. Furthermore, it would not have been obvious to allow rotation of the Berrang device from a first surface to a second surface, since such a rotation would render Berrang inoperative for its intended purpose. Berrang is specifically positioned to allow a finger 48 to activate the volume or on/off of the device by pushing against the skin covering housing

sections 2 or 3. (*See* Berrang, col. 14, ln. 60 through col. 5, line 10; and Figs. 7, 8a and 8b). Modifying Berrang to allow rotation of the housing between a first surface and a second surface would render the push button feature completely inoperative.

11. For at least these reasons, Applicants respectfully assert that Berrang fails to anticipate or render obvious all of the elements of Applicants' claim 39. Therefore, Applicants respectfully request that the rejection of claim 39 be reconsidered, and that it be withdrawn.

***Claim 55***

12. Claim 55 is directed to a "cochlear implant system comprising...an implantable housing having...a receiver coil attached to said housing...wherein said housing...is rotatable about said rotational axis of said housing between a first implant orientation in which the housing is implanted such that a first housing surface is adjacent the recipient's skull and a second implant orientation in which the housing is implanted such that a second housing surface is adjacent the recipient's skull, and such that said second region implanted in the cochlea remains substantially stationary during said rotation and the locations of the receiver coil relative to an ear of the recipient are different in the first and second implant orientations."

13. Claim 55 is allowable for reasons substantially similar to those discussed above. Namely, Berrang does not disclose or render obvious a housing that is rotatable between a first implant orientation in which the housing is positioned on a first surface and a second implant orientation where the housing is positioned on a second surface.

***Claim Rejections under 35 U.S.C. § 103***

14. The Examiner has rejected claims 42 and 58 under 35 U.S.C. §103 as being unpatentable over Berrang. Similarly, the Examiner has rejected claims 50-54, 63 and 65-69, under 35 U.S.C. §103 as being unpatentable over Berrang in view of various other references, namely U.S. Patent No. 6,272,382 to Faltys *et al.*, (hereinafter, "Faltys") and U.S. Patent No. 6,205,360 to Carter *et al.*, (hereinafter, "Carter").

15. Applicants submit that each of these claims is allowable for the reasons discussed above, since none of the secondary references overcome the deficiencies of Berrang.

Specifically, none of the cited references disclose or render obvious, alone or in combination with Berrang, a housing rotatable between a first implant orientation in which the housing is positioned on a first surface and a second implant orientation in which the housing is positioned on a second surface, as recited in the independent claims.

16. Therefore, for at least these reasons, Applicants respectfully request that the rejections under 35 U.S.C. §103 be reconsidered, and that they be withdrawn.

***Dependent Claims***

17. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

***Conclusion***

18. Applicants respectfully request entry of the claim amendments, as the claim amendments are believed to place the application in condition for allowance. A notice to this effect is respectfully requested. In the event that Examiner disagrees with Applicants, Applicants respectfully requests a telephone interview with the Examiner to discuss and possibly resolve the issues.

19. Applicants make no admissions by not addressing any outstanding rejections or basis of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional

application. Thus, cancellations and amendments of above claims are not to be construed as an admission regarding the patentability of any claims.

Dated: October 27, 2008

Respectfully submitted,

Electronic signature: /Michael G. Verga/  
Michael G. Verga

Registration No.: 39,410  
CONNOLLY BOVE LODGE & HUTZ LLP  
1875 Eye Street, NW  
Suite 1100  
Washington, DC 20006  
(202) 331-7111  
(202) 293-6229 (Fax)  
Attorney for Applicants